



STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Lyudmyla Kovalyuk,  
*et al*, Department of Health

Administrative Appeal

CSC Docket Nos. 2016-3635, *et al*

ISSUED: February 14, 2020 (SLD)

The Department of Health,<sup>1</sup> on behalf of Lyudmyla Kovalyuk, Michael Santiago, Lidiya Shapovalova, Leonardo Cruz,<sup>2</sup> Lina Pokidyuk<sup>3</sup> and Nicole Nock, requests that *N.J.A.C.* 4A:1-1.3 and *N.J.A.C.* 4A:3-4.10 be relaxed to allow their appointments to the non-competitive title of Senior Laundry Worker, from the non-competitive title of Senior Building Maintenance Worker, to be processed as a lateral movement.

By way of background, the appointing authority appointed Nock, Santiago, Shapovalova, Pokihyuk, Kovalyuk and Cruz, to the title of Senior Building Maintenance Worker, effective June 16, 2001, December 14, 2002, July 24, 2004, November 11, 2006, January 19, 2008 and September 13, 2008, respectively. Thereafter, Nock, Pokidyuk and Cruz challenged the assignment of out-of-title duties, and as a result, were appointed to the title of Senior Laundry Worker, effective June 27, 2015. On October 8, 2015, a Promotional Opportunity posting (posting) was issued for the title of Senior Laundry Worker. It noted that it would be a “lateral reassignment opportunity” for all full-time Senior Building Maintenance Workers, and as such the salary would remain the same. As a result of this position, the appointing authority appointed Kovalyuk, Santiago and Shapovalova to the title of Senior Laundry Worker, effective January 9, 2016. It is

<sup>1</sup> This request was originally filed by the Department of Human Services. Subsequently, the facility where the incumbents work was transferred to the Department of Health.

<sup>2</sup> Agency records indicate that Cruz was promoted to the non-competitive title of Truck Driver, Single Axle, effective July 20, 2019.

<sup>3</sup> Agency records indicate that Pokidyuk was promoted to the non-competitive title of Crew Supervisor, Building Maintenance Workers, effective December 9, 2017.

noted that the salary range of both titles is O-08.<sup>4</sup> However, since the title Senior Building Maintenance Worker is class code 07, and the title of Senior Laundry Worker is class code 06, the movement was processed as a demotion.

On appeal to the Civil Service Commission (Commission), the appointing authority argues that the movement from the title of Senior Building Maintenance Worker to the title of Senior Laundry Worker has “always” been processed as a lateral movement, with no loss in salary. In support it submits a printout from the Personnel Management Information System (PMIS) entitled “Demotion Review” for an E.M., dated April 29, 2006, which indicates that E.M.’s salary did not change upon her movement from Senior Building Maintenance Worker to Senior Laundry Worker. Moreover, it asserts that the posting indicated that it was a lateral reassignment opportunity and there would be no change in salary. As Kovalyuk, Santiago and Shapovalova relied on the statements the appointing authority made in “good faith,” it states that they and should not be “penalized” by having their salary reduced.

Agency records also reveal that although E.M.’s movement from Senior Building Maintenance Worker to the title of Senior Laundry Worker was processed as a demotion, the resulting decrease in salary was manually overridden, to allow her salary to remain the same.

The Salary Schedule in effect for range O-08, for all relevant times was, in part, as follows:

<b>Increment</b>	\$1,250.14
<b>Step 5</b>	\$33,872.51
<b>Step 6</b>	\$35,122.65
<b>Step 7</b>	\$36,372.79
<b>Step 8</b>	\$37,622.93
<b>Step 9</b>	\$38,873.07
<b>Step 10</b>	\$40,123.21

The appellants’ records reflect, in pertinent part, the following:

	<b>Appointment Date</b>	<b>Title</b>	<b>Anniversary Date</b>	<b>Range &amp; Step</b>	<b>Salary</b>
<b>Nock</b>	7/12/14	SBMW	16/14	O-08, step 10	\$40,123.21
	6/27/15	SLW	14/17	O-08, step 9	\$38,873.07
	9/2/16	SLW	20/17**	O-08, step 9	\$38,873.07

<sup>4</sup> Agency records indicate that the salary range for the title of Senior Laundry Worker was changed from O-07 to O-08, effective June 26, 2004 as a result of negotiations between the union and the Office of Employee Relations. However, the class code remained unchanged.

<b>Santiago</b>	7/12/14	SBMW	26/13***	O-08, step 10	\$40,123.21
	1/9/16	SLW	2/18	O-08, step 9	\$38,873.07
<b>Shapovalova</b>	5/2/15	SBMW	11/15***	O-08, step 10	\$40,123.21
	1/9/16	SLW	2/18	O-08, step 9	\$38,873.07
<b>Pokidyuk</b>	7/26/14	SBMW	3/16	O-08, step 8	\$37,622.93
	6/27/15	SLW	17/15	O-08, step 7	\$36,372.79
	7/25/15	SLW	3/17	O-08, step 8	\$37,622.93
	4/9/16	SLW	13/17**	O-08, step 8	\$37,622.93
<b>Kovalyuk</b>	1/10/15	SBMW	15/16	O-08, step 8	\$37,622.93
	1/9/16	SLW	15/16	O-08, step 7	\$36,372.79
	7/9/16	SLW	2/18	O-08, step 8	\$37,622.93*
<b>Cruz</b>	9/6/14	SBMW	2/15	O-08, step 7	\$36,372.79
	6/27/15	SLW	2/15	O-08, step 6	\$35,122.65
	9/5/15	SLW	19/16	O-08, step 7	\$36,372.79
	9/3/16	SLW	6/18	O-08, step 8	\$37,622.93*

**SBMW**-Senior Building Maintenance Worker -- **SLW**-Senior Laundry Worker

\*Pursuant to an agreement with the union (IFTPE), increments were restored.

\*\*Due to several unpaid leaves of absences, the anniversary date was advanced.

\*\*\*For step 10, there is no anniversary date for increment purposes.

## CONCLUSION

*N.J.A.C.* 4A:1-1.3 provides that, in State service, a “demotion” is defined as a reduction in class code. *N.J.A.C.* 4A:1-1.3 also provides that, a “lateral movement” is defined as an employee movement from one position to another with a similar salary and level of duties, responsibilities, and qualifications, and where applicable, the same class code. *N.J.A.C.* 4A:3-4.10(c) provides, in pertinent part, that if the demotion is other than disciplinary or in lieu of removal under *N.J.A.C.* 4A:3-4.10(b), the employee’s salary shall be reduced one increment in the higher range, then the employee’s salary in the lower range will be set at the step that is equal to or next higher than such reduced salary. *N.J.A.C.* 4A:3-4.8 provides, in pertinent part, that a lateral pay adjustment occurs when an employee moves to a title having the same class code. *N.J.A.C.* 4A:1-1.2(c) provides that a rule may be relaxed for good cause in a particular situation.

In the instant matter, the title of Senior Building Maintenance Worker is class code 07, and the title of Senior Laundry Worker is class code 06. Therefore, pursuant to *N.J.A.C.* 4:1-1.3, since the appellants moved to a title with a lower class code, the movement was correctly determined to be a demotion. As a result, the

appellants' salary upon their appointment to the title of Senior Laundry Worker was properly calculated pursuant to *N.J.A.C.* 4A:3-4.10(c). The appointing authority argues that *N.J.A.C.* 4A:1-1.3 and *N.J.A.C.* 4A:3-4.10 be relaxed to allow the appellants' appointments to the title of Senior Laundry Worker, from the title of Senior Building Maintenance Worker, to be processed as a lateral movement. Specifically, it asserts that the titles have "always" been processed as a lateral move. In support, it submits the positing in which it indicated that the move to Senior Laundry Worker would be a lateral move for an individual in the title of Senior Building Maintenance Worker, with no resulting loss of salary. It also notes, that in 2006, E.M.'s salary was not reduced upon her appointment to the title of Senior Laundry Worker, to the title of Senior Building Maintenance Worker. Although the appointing authority argues that the movement from Senior Building Maintenance Worker to Senior Laundry Worker has "always" been processed as a lateral move, the record does not support that argument. On the contrary, the record reveals that E.M. in 2006, and Nock, Pokidyuk and Cruz in June 2015, moved from the title of Senior Building Maintenance Worker to Senior Laundry Worker, and all of their movements were processed as demotions. Although it is true that E.M.'s salary did not decrease, agency records indicate that that was accomplished by a manual override for unknown reasons. However, the posting that Kovalyuk, Santiago and Shapovalova applied for indicated that it was a lateral reassignment opportunity and there would be no change in salary. Accordingly, good cause has been established to relax the rules to process Kovalyuk, Santiago and Shapovalova's appointment to the title of Senior Laundry Worker, as if they were lateral movements so to have no lose in pay. Furthermore, since four of the seven individuals have been appointed to the title of Senior Laundry Worker from the title of Senior Building Maintenance Worker, with no resulting loss of pay, it is appropriate to also process the appointments of Nock, Pokidyuk and Cruz as a lateral movement with no loss of pay. Therefore, the appellants' records should be corrected to reflect that upon their appointment to Senior Laundry Worker they remain on the same step with the same salary they possessed as a Senior Building Maintenance Worker, as if the movement was processed as a lateral appointment.

Furthermore, it is noted that in fashioning this remedy, no harm is caused to any other employee with the appointing authority since their records are not affected. Finally, it is noted that this remedy is limited to the facts of this case and does not provide precedent in any other matter.

### **ORDER**

Therefore, it is ordered that these appeals be granted and the records of Lyudmyla Kovalyuk, Michael Santiago, Lidiya Shapovalova, Leonardo Cruz, Lina Pokidyuk and Nicole Nock be corrected to reflect the decision above. It is also ordered that Ms. Kovalyuk, Mr. Santiago, Ms. Shapovalova, Mr. Cruz, Ms.

Pokidyuk and Ms. Nock receive differential back pay from the effective date of their appointment to the title of Senior Laundry Worker until their salary is changed.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE  
CIVIL SERVICE COMMISSION ON  
THE 12TH DAY OF FEBRUARY, 2020



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